

1 Cheryl L. Schreck (SBN 130083)  
E-Mail: cschreck@fisherphillips.com  
2 FISHER & PHILLIPS LLP  
444 South Flower Street, Suite 1500  
3 Los Angeles, California 90071  
Telephone: (213) 330-4500  
4 Facsimile: (213) 330-4501

5 Attorneys for Defendant  
R&L CARRIERS SHARED SERVICES, L.L.C.  
6  
7

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10

11 KEVIN FRY,

12 Plaintiff,

13 v.

14 R&L CARRIERS SHARED  
SERVICES, L.L.C., and DOES 1-  
15 50,

16 Defendants.  
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Case No:

**DECLARATION OF CHERYL L.  
SCHRECK IN SUPPORT OF  
DEFENDANT R&L CARRIERS  
SHARED SERVICES, L.L.C.'S  
NOTICE OF REMOVAL OF CIVIL  
ACTION PURSUANT TO 28 U.S.C. §§  
1332 AND 1441**

*[Filed concurrently with Notice of  
Removal; Civil Cover Sheet; Certification  
of Interested Entities or Persons; and  
Declaration of Daniel J. Brake in Support  
of Removal]*

Complaint Filed: September 29, 2021

**DECLARATION OF CHERYL L. SCHRECK**

I, Cheryl L. Schreck, hereby declare and state as follows:

1. I am an attorney at law duly licensed to practice before all courts in the State of California. I am partner with Fisher & Phillips LLP, counsel of record for Defendant R&L Carriers Shared Services, L.L.C. in the above-captioned matter. Based on my personal knowledge, I assert the facts set forth herein and, if called as a witness, I could and would competently testify thereto.

2. I make this declaration in support of Defendant R&L Carriers Shared Services, L.L.C.'s Notice of Removal of Civil Action Pursuant to 28 U.S.C. §§ 1332 and 1441.

3. The above-captioned action arises out of the purported constructive termination of the employment of Plaintiff Kevin Fry ("Plaintiff") by Defendant R&L Carriers Shared Services, L.L.C. ("Defendant"). On September 29, Plaintiff commenced an action in the Superior Court of the State of California in and for the County of Alameda against Defendant styled *Kevin Fry v. R&L Carriers Shared Services, L.L.C.*, Case No. RG21114487 (hereinafter referred to as the "State Court Action"). True and correct copies of the Summons and Complaint filed in the State Court Action are attached hereto as Exhibit A.

4. Apart from the summons and complaint, the only other pleading that has been filed in the State Court Action is Defendant R&L Carriers Shared Services, L.L.C.'s Answer and Affirmative Defenses to Plaintiff Kevin Fry's Complaint. A true and correct copy of Defendant R&L Carriers Shared Services, L.L.C.'s Answer and Affirmative Defenses to Plaintiff's Kevin Fry's Complaint is attached hereto as Exhibit B. No other pleadings have been filed in the State Court Action, and no proceedings have been held therein.

5. Based on the allegations in Plaintiff's Complaint filed in the State Court Action, there is no doubt that Plaintiff seeks more than \$75,000 in damages. Plaintiff claims that Defendant discriminated against him because of his disability,

1 retaliated against him, and constructively wrongfully terminated him “for engaging  
 2 in protected activity, requesting reasonable accommodation, attempting to engage  
 3 in the interactive process, and exercising medical leave rights.” See ¶¶ 44, 50, 56,  
 4 62, 80, and 90 of Plaintiff’s Complaint which is attached hereto as Exhibit A.  
 5 Accordingly, Defendant may be liable to Plaintiff for, and he seeks against  
 6 Defendant, past and future lost wages and benefits, as well as emotional distress  
 7 and punitive damages, and attorneys’ fees. See ¶¶ 45-46, 48, 51-52, 54, 58, 60, 63-  
 8 64, 66, 69-70, 72, 81, 83-85, and 92 of Plaintiff’s Complaint which is attached  
 9 hereto as Exhibit A.

10 6. Plaintiff will more likely than not claim past lost wages and benefits  
 11 through trial. At the time of his termination, Plaintiff earned an annual salary of  
 12 \$60,000, or \$5,000 per month. See Brake Dec. filed concurrently herewith at ¶ 6.  
 13 Given that Plaintiff alleges that he was constructively terminated as of July 16,  
 14 2020 and it has been 17 months since Plaintiff’s “constructive termination,” his  
 15 past lost wages to date, not even including the value of lost employment benefits,  
 16 is \$85,000 (*i.e.*, \$60,000 divided by 12 multiplied by 17 months since “constructive  
 17 termination”). See Plaintiff’s Complaint at ¶ 40, which is attached hereto as Exhibit  
 18 A. Because Plaintiff will likely seek lost wages through trial, and trial will likely  
 19 not take place until December 2022, at the earliest (*i.e.*, one year from the filing of  
 20 the notice of removal), Plaintiff’s lost wages will increase by another \$60,000, for  
 21 a total past lost wages in controversy of \$145,000 (*i.e.*, past lost wages to date of  
 22 \$85,000 plus an addition \$60,000 from date of notice of removal to one year from  
 23 the filing of the notice of removal).

24 7. Therefore, Plaintiff’s purported past lost wages to date (not even  
 25 taking into consideration future lost wages and past and future lost employee  
 26 benefits) well exceed \$75,000 and, in fact, may be much more through trial. This  
 27 is not even factoring in potential emotional distress and/or punitive damages, which  
 28 Plaintiff seeks in connection with all of the claims he has asserted in his complaint.

1           8. I declare under penalty of perjury, under the laws of the State of  
2 California, that the foregoing is true and correct. Executed on December 29, 2021,  
3 at Los Angeles, California.

4   
5 \_\_\_\_\_  
6 CHERYL L. SCHRECK

# Exhibit A



**Service of Process  
Transmittal**

12/09/2021

CT Log Number 540711491

**TO:** Teresa Reed  
R & L Carriers Shared Services, L.L.C.  
600 Gillam Rd, PO Box 271  
Wilmington, OH 45177-0271

**RE: Process Served in California**

**FOR:** R & L Carriers Shared Services, L.L.C. (Domestic State: OH)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** Re: KEVIN FRY, an individual // To: R & L Carriers Shared Services, L.L.C.

**DOCUMENT(S) SERVED:** --

**COURT/AGENCY:** None Specified  
Case # RG21114487

**NATURE OF ACTION:** Employee Litigation

**ON WHOM PROCESS WAS SERVED:** C T Corporation System, GLENDALE, CA

**DATE AND HOUR OF SERVICE:** By Regular Mail on 12/09/2021 postmarked: "Not Post Marked"

**JURISDICTION SERVED :** California

**APPEARANCE OR ANSWER DUE:** None Specified

**ATTORNEY(S) / SENDER(S):** None Specified

**ACTION ITEMS:** CT will retain the current log

Image SOP

Email Notification, Jeff Wade jwade@rlcarriers.com

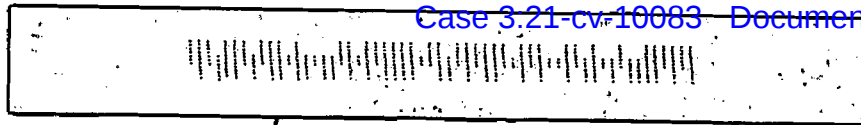
Email Notification, Dan Brake dbrake@rlcarriers.com

Email Notification, Teresa Reed teresa.reed@rlcarriers.com

Email Notification, Cynthia Henry chenry@rlcarriers.com

**REGISTERED AGENT ADDRESS:** C T Corporation System  
330 N BRAND BLVD  
STE 700  
GLENDALE, CA 91203  
866-331-2303  
CentralTeam1@wolterskluwer.com

The information contained in this Transmittal is provided by CT for quick reference only. It does not constitute a legal opinion, and should not otherwise be relied on, as to the nature of action, the amount of damages, the answer date, or any other information contained in the included documents. The recipient(s) of this form is responsible for reviewing and interpreting the included documents and taking appropriate action, including consulting with its legal and other advisors as necessary. CT disclaims all liability for the information contained in this form, including for any omissions or inaccuracies that may be contained therein.

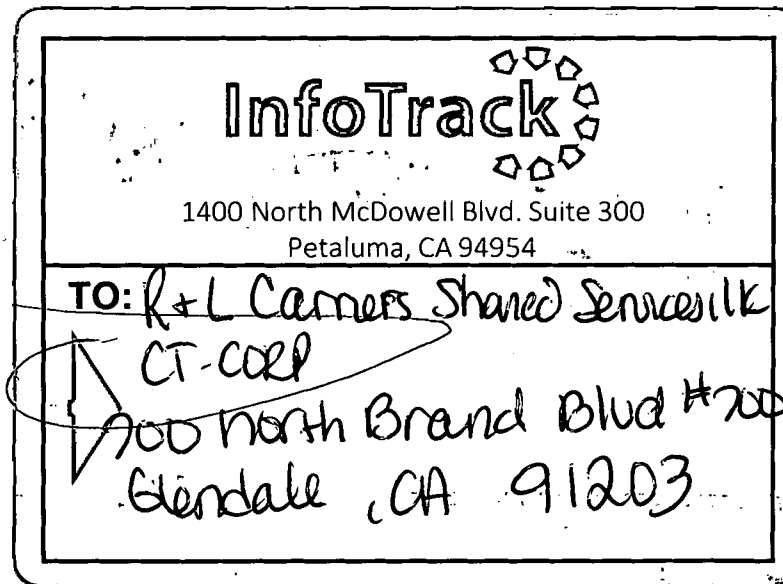


FIRST-CLASS



US POSTAGE PITNEY BOWES

ZIP 94954 \$ 001.96<sup>0</sup>  
02 7H  
0001353392 DEC 02 2021



From: Devin Coyle

Fax: 18004218057

To:

Fax: (510) 267-1547

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SUM-100

# SUMMONS (CITACION JUDICIAL)

## NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

R&amp;L CARRIERS SHARED SERVICES, L.L.C., and DOES 1-50

## YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE): KEVIN FRY

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)FILED BY FAX  
ALAMEDA COUNTY

September 29, 2021

CLERK OF  
THE SUPERIOR COURT  
By Curtiyah Ganter, Deputy

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

**AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO.** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Superior Court of California - Alameda

René C. Davidson Courthouse  
1225 Fallon Street, Oakland, CA 94612CASE NUMBER:  
(Número del Caso)

RG21114487

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

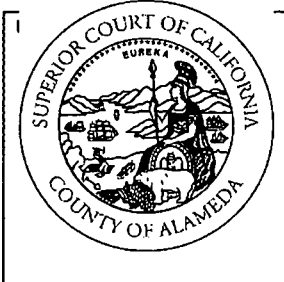
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Devin Coyle, COYLE BROWNE LAW, 1999 Harrison Street, Suite 200, Oakland, CA 94612, 510-584-9020

DATE: September 29, 2021  
(Fecha)Clerk, by  
(Secretario)Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



### NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):
- ☒ on behalf of (specify): R&L Carriers Shared Services, L.L.C.

under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)

- ☒ other (specify): Corporation Code 17061 Limited Liability Company
- ☐ by personal delivery on (date):

Page 1 of 1



From: Devin Coyle

Fax: 18004218057

To:

Fax: (510) 267-1547

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**FILED BY FAX**  
ALAMEDA COUNTY

September 29, 2021

CLERK OF  
THE SUPERIOR COURT  
By Curtiyah Ganter, Deputy

CASE NUMBER:

**RG21114487**

DEVIN COYLE (SBN 267194)  
devin@coylebrownelaw.com  
DAVID BROWNE (SBN 261345)  
david@coylebrownelaw.com  
STEPHANIE BAKER (SBN 329950)  
stephanie@coylebrownelaw.com  
COYLE BROWNE LAW  
1999 Harrison Street, Suite 1800  
Oakland, CA 94612-4700  
Tel: 510-584-9020 / Fax: 510-584-9039

*Attorneys for Plaintiff Kevin Fry*

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA  
(UNLIMITED JURISDICTION)

KEVIN FRY, an individual,  
Plaintiff,

v.

R&L CARRIERS SHARED SERVICES,  
L.L.C., and DOES 1-50,  
Defendants.

Case No.

## COMPLAINT FOR:

1. Discrimination based on Disability (FEHA)
2. Failure to Engage in Interactive Process (FEHA)
3. Failure to Accommodate (FEHA)
4. Retaliation (FEHA)
5. Failure to Prevent Discrimination and Retaliation (FEHA)
6. Retaliation (Labor Code § 1102.5)
7. Wrongful Termination in Violation of Public Policy

Demand for Jury Trial

COMPLAINT

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1 Plaintiff KEVIN FRY brings this action against Defendants R&L CARRIERS SHARED  
2 SERVICES, L.L.C., and DOES 1-50 (hereinafter sometimes collectively referred to as "R&L" or  
3 "Defendant"), jointly and individually, and alleges as follows.

#### 4 INTRODUCTION

5 1. Plaintiff Kevin Fry was formerly employed as an Inbound Router by Defendant  
6 R&L, a freight shipping company.

7 2. In the spring and summer of 2020, Defendant R&L was not complying with the  
8 mandates and other guidance set forth by the California Department of Public Health to protect  
9 its employees (and the community at large) from the spread of COVID-19.

10 3. Specifically, R&L employees and supervisors were not wearing masks or social  
11 distancing. R&L management was complicit in this behavior.

12 4. Mr. Fry is chronically immunosuppressed.

13 5. When Mr. Fry and his doctors asked R&L to comply with California's COVID-  
14 19 mandates regarding social distancing and mask-wearing, R&L responded by refusing to  
15 return Mr. Fry to work and constructively terminating his employment.

#### 16 PARTIES

17 6. Plaintiff Kevin Fry is a resident of Alameda County.

18 7. Defendant R&L operates a shipping terminal in Alameda County located at  
19 15651 Worthley Drive, San Lorenzo, CA 94580. At all times relevant, Defendant R&L has been  
20 an employer covered by the Fair Employment and Housing Act ("FEHA"), California  
21 Government Code Section 12940 et. Seq., which prohibits discrimination and retaliation on the  
22 basis of disability.

23 8. Defendants 1 through 50 are sued under fictitious names pursuant to Code of  
24 Civil Procedure Section 474. Plaintiff is informed and believes, and on that basis alleges, that  
25 each of the defendants sued under fictitious names is in some manner responsible for the  
26 wrongs and damages alleged below, and in so acting was functioning as the agent, servant,  
27 partner, and employee of the co-defendants, and in taking the actions mentioned below was  
28 acting within the course and scope of their authority as such agent, servant, partner, and

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1 employee, with the permission and consent of co-defendants. At all relevant times, all  
2 defendants acted as agents of all other defendants in committing the acts alleged herein.

### 3 JURISDICTION

4 9. Jurisdiction of this Court is invoked pursuant to the FEHA. Specifically,  
5 Cal. Gov. Code § 12965(b) provides in pertinent part that after receiving a right to sue letter  
6 from the Department of Fair Employment and Housing ("DFEH"), an aggrieved individual may  
7 file a civil lawsuit "against the person, employer, labor organization or employment agency  
8 named in the verified complaint within one year from the date of that notice." Section 12965(b)  
9 continues: "The superior courts of the State of California shall have jurisdiction of those  
10 actions, and the aggrieved person may file in these courts."

11 10. Mr. Fry timely filed a complaint of discrimination against Defendants with the  
12 DFEH on September 19, 2021 and received an immediate right to sue letter the same day.

13 11. By obtaining a Right-to-Sue notice from the DFEH in a timely manner, Mr. Fry  
14 exhausted all available and required administrative remedies.

15 12. The amount in controversy exceeds \$25,000.00.

### 16 VENUE

17 13. Venue in this Court is also proper pursuant to Section 12965(b), which further  
18 provides that "[s]uch an action may be brought in any county in the state in which the unlawful  
19 practice is alleged to have been committed, in the county in which the records relevant to the  
20 practice are maintained and administered, or in the county in which the aggrieved person would  
21 have worked or would have had access to the public accommodation but for the alleged  
22 unlawful practice, but if the defendant is not found within any of these counties an action may  
23 be brought within the county of defendant's residence or principal office."

24 14. Mr. Fry was employed by Defendants in Alameda County and would have  
25 continued working in Alameda County but for Defendants' unlawful practices, many of which  
26 were committed in Alameda County.

27 //

28 //



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1           26.     Mr. Fry emailed Ms. Garen the same day requesting clarification on whether or  
2 not he had been terminated.

3           27.     Ms. Garen responded that, "the decision to terminate your employment was  
4 reversed and I was directed by my superiors to extend your leave of absence."

5           28.     Thereafter, Ms. Garen informed Mr. Fry that he had been granted another  
6 "FEHA/ADAAA accommodation for the period of 5/14/2020 through 06/12/2020."

7           29.     On or around May 23, 2020, Mr. Fry gave R&L a note from his care provider,  
8 Dana Jakoubek, a Nurse Practitioner at UCSF, stating that he could return to work on June 12,  
9 2020 "while adhering to wearing masks (covering nose and mouth), maintaining excellent hand  
10 hygiene and social distancing."

11           30.     On or around June 15, 2020, Mr. Fry emailed Jim Fishpaw, R&L's Vice President  
12 of Human Resources, as follows: "Mr. Fishpaw, My unpaid medical leave ended Friday, June  
13 12, 2020. The doctors at UCSF informed me that I'm able to return to work as long as certain  
14 medically advised precautions are taken. Due to my complex medical condition involving my...  
15 compromised immune system, I have been awaiting communication from the company that a  
16 COVID-19 site specific protection plan is in place at the Oakland terminal to help ensure my  
17 health and safety. The guidelines as written by the California government include training for  
18 employees on how to limit the spread of the virus, control measures and screening, disinfection  
19 protocols and physical distancing protocols as well as masks be worn by all employees at all  
20 times while performing their duties. I have not received assurances a protection plan has been put  
21 in place. I respectfully request a return e-mail from the company with information, in detail,  
22 regarding my return to work. A quick response would be greatly appreciated."

23           31.     On or around June 19, 2020, Mr. Fry received an email from Sarah Vollman,  
24 Esq., R&L's Director of Benefits, stating among other things that, "Your health care provider's  
25 restrictions that you work wearing a mask covering your nose and mouth as well as maintaining  
26 excellent hand hygiene and social distancing are acceptable and will be accommodated."

27           32.     However, around this time, Mr. Fry learned from a co-worker that R&L was not  
28 complying with the mandates and other guidance set forth by the California Department of

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1 Public Health as of June 18, 2020 to protect its employees (and the community at large) from the  
2 spread of COVID-19.” Mr. Fry was informed that employees were not wearing masks or social  
3 distancing, and that management was complicit in this behavior.

4 33. On or around June 23, 2020, Mr. Fry told Ms. Vollman that he still had concerns  
5 about the Oakland terminal because other “R&L employees not wearing masks and not  
6 maintaining proper social distancing could have grave consequences given [his] medical  
7 condition.” Mr. Fry asked Ms. Vollman to please confirm that his coworkers had been trained  
8 and would be following California’s COVID-19 guidelines.”

9 34. On or around June 24, 2020, Mr. Fry submitted an updated note from his medical  
10 provider, which stated: “Kevin Fry... may return to work as of 6/12/20... [I]t is ok for patients to  
11 go back to work while adhering to wearing masks (covering nose and mouth), including those  
12 within close proximity to the patient, maintaining excellent hand hygiene and social distancing  
13 (outside of 6 feet whenever possible) ... In addition to this, we ask that the company comply  
14 with the mandates and other guidance set forth by the California Department of Public Health as  
15 of June 18, 2020 when Kevin Fry is working to protect both this patient and his fellow  
16 employees from the spread of Covid-19.” (emphasis added, link to [cdph.ca.gov](https://www.cdph.ca.gov) omitted)

17 35. On or around June 25, 2020, Ms. Vollman informed Mr. Fry that R&L could not  
18 accommodate his request because not all employees could be required to wear masks:

19 “Kevin, Thank you for providing me with all information necessary for us to complete  
20 the interactive process to determine a reasonable accommodation that satisfies your  
21 medical restrictions... Please be advised that the public health order issued by Governor  
22 Gavin Newsom on June 18, 2020 includes specific exemptions from the wearing of face  
23 coverings. For example, people that suffer from medical conditions or disabilities that  
24 prevent them from wearing a face covering are not required to wear face coverings. Thus,  
25 R+L cannot guarantee that every worker in the Oakland terminal or any other locations,  
26 including customers, will be wearing a face covering while working at or visiting the  
27 terminal. Of course, due to privacy concerns, we will not be able to identify for you who  
28 may be exempt from wearing face coverings during your working hours at the terminal.

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1 Consequently, because your health care provider's orders require you to work only in a  
2 setting where anyone working within close proximity to you wear a mask (covering nose  
3 and mouth) to prevent grave consequences to you given your medical condition, we are  
4 placing you on an extended leave of absence as a reasonable accommodation under the  
5 circumstances."

6 36. R&L granted Mr. Fry a further "ADAAA accommodation" from June 13, 2020  
7 through August 10, 2020.

8 37. On or around June 30, 2020, Mr. Fry submitted an updated doctor's note from  
9 UCSF with a modified request for accommodation. The note no longer required all employees in  
10 close proximity of Mr. Fry to wear masks. It merely required that R&L "comply with the  
11 mandates and other guidance set forth by the California Department of Public Health... to  
12 protect both [Mr. Fry] and his fellow employees from the spread of Covid-19."

13 38. On or around July 9, 2020, Ms. Vollman responded that – despite Mr. Fry's desire  
14 and ability to return to work as long as the COVID-19 mandates were followed – R&L's only  
15 offer of accommodation was with "continued leave."

16 39. On or around July 16, 2020, Mr. Fry responded to Ms. Vollman as follows"

17 "Sarah, My current medical restrictions are very clear in my last letter from UCSF. I'm  
18 clear to return to work provid[ed] I wear a mask, wash my hands, and maintain social distance to  
19 the best of my ability. The only accommodation request for the company is to comply with the  
20 California COVID-19 mandates currently in place. Unfortunately, I am aware that R+L's  
21 Oakland terminal is not enforcing the state's public health mandates. For this reason, I cannot  
22 work there anymore."

23 40. Because R&L refused to comply with California's COVID-19 mandates, Mr. Fry  
24 was constructively terminated as of July 16, 2020.

25 41. Several weeks after his constructive termination, Mr. Fry received a letter from  
26 Ms. Garen pointlessly extending his ADAAA accommodation through March 31, 2021.

27 //

28 //









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1 activity, requesting reasonable accommodations, attempting to engage in the interactive process,  
2 and exercising medical leave rights.

3 63. As a direct, foreseeable, and proximate result of Defendant's wrongful acts,  
4 Plaintiff has suffered special and general damages in an amount exceeding this court's  
5 minimum jurisdiction, to be determined according to proof at the time of trial.

6 64. Defendant's acts as herein described were committed maliciously, fraudulently, or  
7 oppressively with the intent of injuring Plaintiff, and/or in willful and conscious disregard of  
8 Plaintiff's rights to work in an environment free from unlawful discrimination. Because these  
9 acts were carried out and/or ratified by managing agents in Defendant's employ in a despicable,  
10 deliberate, and intentional manner, Plaintiff is entitled to recover punitive damages in a sum  
11 sufficient to punish and deter future such conduct.

12 65. Defendant's acts further entitle Plaintiff to a permanent injunction enjoining  
13 Defendant from failing to provide a workplace free from discrimination.

14 66. Plaintiff requests attorney fees against Defendant pursuant to Cal. Gov't. Code  
15 § 12965(b).

16 **FIFTH CAUSE OF ACTION**

17 **Failure to Prevent Discrimination and Retaliation**

18 **in Violation of Cal. Gov't. Code § 12940(k)**

19 **(Against ALL Defendants)**

20 67. Plaintiff re-alleges and incorporates by reference each paragraph of this complaint  
21 as if fully alleged in this paragraph.

22 68. During the course of Plaintiff's employment, Defendant failed to prevent  
23 harassment, discrimination, and/or retaliation against Plaintiff, in violation of Cal. Gov't. Code  
24 § 12940(k).

25 69. As a direct, foreseeable, and proximate result of Defendant's wrongful acts,  
26 Plaintiff has suffered special and general damages in an amount exceeding this court's  
27 minimum jurisdiction, to be determined according to proof at the time of trial.  
28



From: Devin Coyle

Fax: 18004218057

To:

Fax: (510) 267-1547

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1 noncompliance with a local, state, or federal rule or regulation.

2 76. Plaintiff was an employee of Defendant.

3 77. Plaintiff opposed discrimination that he had reasonable cause to believe was in  
4 violation of state and federal civil rights statutes, including FEHA.

5 78. Plaintiff disclosed the discrimination to a person with authority over him who  
6 had the authority to investigate, discover, and correct the violation of his rights.

7 79. Defendants believed that Plaintiff had disclosed or may disclose information to a  
8 government or law enforcement agency, to a person with authority over the employee or another  
9 employee who had the authority to investigate, discover, or correct the violation or  
10 noncompliance.

11 80. Plaintiff's opposition to harassment and discrimination or Defendants' belief that  
12 Plaintiff had disclosed or may disclose information about the harassment and discrimination  
13 was a contributing factor in Defendants' decision to engage in adverse acts against him.

14 81. As a direct, foreseeable, and proximate result of Defendant's wrongful acts and  
15 omissions, Plaintiff has suffered special and general damages in an amount in excess of the  
16 minimum jurisdiction of this court, to be determined according to proof at the time of trial.

17 82. Defendant's conduct was a substantial factor in causing Plaintiff harm.

18 83. Defendant committed the acts and conduct alleged herein by acting knowingly  
19 and willfully, with the wrongful and illegal deliberate intention of injuring Plaintiff, from  
20 improper motives amounting to malice, and in conscious disregard of Plaintiff's rights. Plaintiff  
21 is thus entitled to recover nominal, actual, compensatory, punitive, and exemplary damages in  
22 amounts according to proof at time of trial, in addition to any other remedies and damages  
23 allowable by law.

24 84. Defendant, through its officers, managing agents, employees and/or its  
25 supervisors, authorized, condoned and/or ratified the unlawful conduct alleged herein. By  
26 reason thereof, Plaintiff is entitled to an award of punitive damages in an amount according to  
27 proof at the time of trial.

28

From: Devin Coyle

Fax: 18004218057

To:

Fax: (510) 267-1547

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1           85.     Plaintiff requests attorney fees against Defendant pursuant to Cal. Labor Code  
2     § 1102.5(j).

3                                 **SEVENTH CAUSE OF ACTION**

4                                 **Wrongful Termination in Violation of Public Policy (WTVPP)**

5                                 **(Against ALL Defendants)**

6           86.     Plaintiff re-alleges and incorporates by reference each paragraph of this complaint  
7     as if fully alleged in this paragraph.

8           87.     California's Fair Employment and Housing Act protects employees from  
9     discrimination on the basis of disability, among other things, and allows employees to request  
10    accommodations and engage in protected activity without experiencing retaliation.

11          88.     The right to request accommodations and take medical leave free of interference  
12    and retaliation extends to acts of private employers; it provides a fundamental principle of  
13    public policy sufficient to state a cause of action for wrongful termination against a private  
14    employer.

15          89.     Plaintiff was employed by Defendant.

16          90.     Defendant constructively terminated Plaintiff based on a disability (whether  
17    actual or perceived), and for engaging in protected activity, requesting reasonable  
18    accommodations, attempting to engage in the interactive process, and exercising medical leave  
19    rights.

20          91.     As a direct and proximate cause of Defendant's conduct, Plaintiff has suffered  
21    damages.

22          92.     Defendant's acts as herein described were committed maliciously, fraudulently, or  
23    oppressively with the intent of injuring Plaintiff, and/or in willful and conscious disregard of  
24    Plaintiff's rights to work in an environment free from unlawful discrimination. Because these  
25    acts were carried out and/or ratified by managing agents in Defendant's employ in a despicable,  
26    deliberate, and intentional manner, Plaintiff is entitled to recover punitive damages in a sum  
27    sufficient to punish and deter future such conduct.

28    //

From: Devin Coyle

Fax: 18004218057

To:

Fax: (510) 267-1547

Page: 20 of 20

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- a) Declaratory relief;
- b) Injunctive relief against Defendants to prevent further recurrence of their unlawful discrimination;
- c) Special and general damages in an amount to be determined by proof at trial;
- d) Statutory damages and penalties pursuant to Cal. Labor Code § 1102.5
- e) Punitive damages;
- f) Pre- and post-judgment interest on all damages awarded;
- g) Reasonable attorney's fees;
- h) Costs of suit incurred;
- i) Other relief as the Court may deem just and proper.

**JURY DEMAND**

ADDITIONALLY, Plaintiff demands trial of this matter by jury.

Dated: September 29, 2021

COYLE BROWNE LAW



Devin Coyle

*Attorneys for Plaintiff Kevin Fry*

DEVIN COYLE LAW  
 Attn: Coyle, Devin  
 1999 Harrison Street #1800  
 Oakland, CA 94612

**Superior Court of California, County of Alameda**

Fry

Plaintiff/Petitioner(s)

VS.

R&L Carriers Shared Services, L.L.C.

Defendant/Respondent(s)

(Abbreviated Title)

No. RG21114487

**NOTICE OF CASE MANAGEMENT  
 CONFERENCE AND ORDER**  
 Unlimited Jurisdiction

**TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

Notice is given that a Case Management Conference has been scheduled as follows:

<b>Date:</b> 02/22/2022 <b>Time:</b> 03:00 PM	<b>Department:</b> 15 <b>Location:</b> Administration Building Third Floor 1221 Oak Street, Oakland CA 94612  <b>Internet:</b> <a href="http://www.alameda.courts.ca.gov">www.alameda.courts.ca.gov</a>	<b>Judge:</b> Patrick R. McKinney II <b>Clerk:</b> Pamela Drummer-Williams <b>Clerk telephone:</b> (510) 267-6931 <b>E-mail:</b> <a href="mailto:Dept15@alameda.courts.ca.gov">Dept15@alameda.courts.ca.gov</a> <b>Fax:</b>
--	--	--

**ORDERS**

**1. Plaintiff must:**

- a. Serve all named defendants and file proofs of service on those defendants with the court within 60 days of the filing of the complaint (Cal. Rules of Court, 3.110(b)); and
- b. Give notice of this conference to all other parties and file proof of service.

**2. Defendant must respond as stated on the summons.**

**3. All parties who have appeared before the date of the conference must:**

- a. Meet and confer, in person or by telephone as required by Cal. Rules of Court, rule 3.724;
- b. File and serve a completed *Case Management Statement* on Form CM-110 at least 15 days before the Case Management Conference (Cal. Rules of Court, rule 3.725); and
- c. Post jury fees as required by Code of Civil Procedure section 631.

**4. If you do not follow the orders above, the court may issue an order to show cause why you should not be sanctioned under Cal. Rules of Court, rule 2.30. Sanctions may include monetary sanctions, striking pleadings or dismissal of the action.**

**5. You are further ordered to appear in person or through your attorney of record at the Case Management Conference noticed above. You must be thoroughly familiar with the case and fully authorized to proceed. You may be able to appear at Case Management Conferences by telephone. Contact CourtCall, an independent vendor, at least three business days before the scheduled conference. Call 1-888-882-6878, or fax a service request to (888) 882-2946. The vendor charges for this service.**

**6. You may file *Case Management Conference Statements* by E-Delivery. Submit them directly to the E-Delivery Fax Number (510) 267-5732. No fee is charged for this service. For further information, go to [www.alameda.courts.ca.gov/ff](http://www.alameda.courts.ca.gov/ff).**

**7. The judge may place a *Tentative Case Management Order* in your case's on-line register of actions before the conference. This order may establish a discovery schedule, set a trial date or refer the case to Alternate Dispute Resolution, such as mediation or arbitration. Check the website of each assigned department for procedures regarding tentative case management orders at [www.alameda.courts.ca.gov/dc](http://www.alameda.courts.ca.gov/dc).**



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**CLERK'S CERTIFICATE OF MAILING**

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice of Hearing by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 10/05/2021.

By

 Digital

Deputy Clerk

**Superior Court of California, County of Alameda**



**Notice of Assignment of Judge for All Purposes**

Case Number: RG21114487

Case Title: Fry VS R&L Carriers Shared Services, L.L.C.

Date of Filing: 09/29/2021

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Pursuant to Rule 3.734 of the California Rules of Court and Title 3 Chapter 2 of the Local Rules of the Superior Court of California, County of Alameda, this action is hereby assigned by the Presiding Judge for all purposes to:

<b>Judge:</b>	<b>Patrick R. McKinney II</b>
<b>Department:</b>	<b>15</b>
<b>Address:</b>	<b>Administration Building</b>
	<b>1221 Oak Street</b>
	<b>Oakland CA 94612</b>
<b>Phone Number:</b>	<b>(510) 267-6931</b>
<b>Fax Number:</b>	
<b>Email Address:</b>	<b>Dept15@alameda.courts.ca.gov</b>

Under direct calendaring, this case is assigned to a single judge for all purposes including trial.

**Please note: In this case, any challenge pursuant to Code of Civil Procedure section 170.6 must be exercised within the time period provided by law. (See Code Civ. Proc. §§ 170.6, subd. (a)(2) and 1013.)**

**NOTICE OF NONAVAILABILITY OF COURT REPORTERS:** Effective June 4, 2012, the court will not provide a court reporter for civil law and motion hearings, any other hearing or trial in civil departments, or any afternoon hearing in Department 201 (probate). Parties may arrange and pay for the attendance of a certified shorthand reporter. In limited jurisdiction cases, parties may request electronic recording.

Amended Local Rule 3.95 states: "Except as otherwise required by law, in general civil case and probate departments, the services of an official court reporter are not normally available. For civil trials, each party must serve and file a statement before the trial date indicating whether the party requests the presence of an official court reporter."

IT IS THE DUTY OF EACH PLAINTIFF AND CROSS COMPLAINANT TO SERVE A COPY OF THIS NOTICE IN ACCORDANCE WITH LOCAL RULES.

### **General Procedures**

Following assignment of a civil case to a specific department, all pleadings, papers, forms, documents and writings can be submitted for filing at either Civil Clerk's Office, located at the René C. Davidson Courthouse, Room 109, 1225 Fallon Street, Oakland, California; 94612, and the Hayward Hall of Justice, 24405 Amador Street, Hayward, California, 94544. All documents, with the exception of the original summons and the original civil complaint, shall have clearly typed on the face page of each document, under the case number, the following:

ASSIGNED FOR ALL PURPOSES TO  
JUDGE Patrick R. McKinney II  
DEPARTMENT 15

All parties are expected to know and comply with the Local Rules of this Court, which are available on the court's website at: [http://www.alameda.courts.ca.gov/Pages.aspx/Local-Rules\(1\)](http://www.alameda.courts.ca.gov/Pages.aspx/Local-Rules(1)) and with the California Rules of Court, which are available at [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov).

Parties must meet and confer to discuss the effective use of mediation or other alternative dispute processes (ADR) prior to the Initial Case Management Conference. The court encourages parties to file a "Stipulation to Attend ADR and Delay Initial Case Management Conference for 90 Days". Plaintiff received that form in the ADR information package at the time the complaint was filed. The court's website also contains this form and other ADR information. If the parties do not stipulate to attend ADR, the parties must be prepared to discuss referral to ADR at the Initial Case Management Conference.

Contacts with Dept. 15 should be by email to Dept. 15@alameda.courts.ca.gov. You must provide copies of all email communications to each party (or their attorneys, if represented) at the same time you send the email to the Court and you must show that you have done so in your email. When a copy of a document must be transmitted to court staff, an email attachment is preferable to fax. Use of an email attachment or fax, however, is not a substitute for filing of pleadings or other documents. Inclusion of available email addresses in the caption of all filed papers, as required by CRC 2.111(1) is required.

Parties/attorneys must confer before scheduling a hearing date. Counsel are expected to be familiar and comply with the Statement of Professionalism and Civility, Alameda County Bar Association [www.acbanet.org](http://www.acbanet.org).

Counsel should consider and recommend creative, efficient approaches to valuing and resolving their case (CRC §3.724).

### **Schedule for Department 15**

The following scheduling information is subject to change at any time, without notice. Please contact the department at the phone number or email address noted above if you have questions.

- Trials generally are held: Unless otherwise advised, both court and jury trials are Mondays through Thursdays at 10:00 am through 4:30 pm; expect to be in the courtroom from 9:00 am to 5:00 pm. Cases may "trail" a trial in progress.
- Case Management Conferences are held: Mon., Wed., Thurs. and Fri. at 9:15 am and Tues. at 3:00 pm. Timely filed and complete case management conference statements are required and may eliminate the need for a hearing.

- Law and Motion matters are heard: Law & Motion hearings will be held on Tuesdays and Thursdays at 1:30 p.m. Email Dept. 15 for reservations. Include case name & number, title of motion and identity of moving party. Courtesy copies shall be delivered to the department.
- Settlement Conferences are heard: As scheduled by the Judge. Court resources are limited, and counsel should consider other ADR alternatives. Conferences will be specially set when deemed appropriate.
- Ex Parte matters are heard: The applicant must contact the clerk for a hearing date and provide CRC 3.1203(a) notice to all parties. The applicant must appear, in person or by phone if allowed, unless it is a stipulation for an order or otherwise allowed under CRC 3.1207.

#### **Law and Motion Procedures**

To obtain a hearing date for a Law and Motion or ex parte matter, parties must contact the department as follows:

- Motion Reservations  
Email: Dept.15@alameda.courts.ca.gov

The parties should check the tentative rulings on the court's website and notify the courtroom clerk and all other parties of plans to contest by 4:00 pm the day before the hearing.

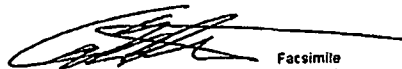
- Ex Parte Matters  
Email: Dept15@alameda.courts.ca.gov

#### **Tentative Rulings**

The court may issue tentative rulings in accordance with the Local Rules. Tentative rulings will become the Court's order unless contested in accordance with the Local Rules. Tentative rulings will be available at:

- Website: [www.alameda.courts.ca.gov/domainweb](http://www.alameda.courts.ca.gov/domainweb), Calendar Information for Dept. 15
- Phone: 1-866-223-2244

Dated: 10/04/2021



Facsimile

Presiding Judge,  
Superior Court of California, County of Alameda

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**CLERK'S CERTIFICATE OF MAILING**

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown on the attached Notice of Initial Case Management Conference and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 10/05/2021

By

 Digital

Deputy Clerk

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## Superior Court of California, County of Alameda Alternative Dispute Resolution (ADR) Information Packet

The person who files a civil lawsuit (plaintiff) must include the ADR Information Packet with the complaint when serving the defendant. Cross complainants must serve the ADR Information Packet on any new parties named to the action.

The Court *strongly encourages* the parties to use some form of ADR before proceeding to trial. You may choose ADR by:

- Indicating your preference on Case Management Form CM-110;
- Filing the Stipulation to ADR and Delay Initial Case Management Conference for 90 Days (a local form included with the information packet); or
- Agree to ADR at your Initial Case Management Conference.

**QUESTIONS?** Call (510) 891-6055. Email [adrprogram@alameda.courts.ca.gov](mailto:adrprogram@alameda.courts.ca.gov)  
Or visit the court's website at <http://www.alameda.courts.ca.gov/adr>

### What Are The Advantages Of Using ADR?

- **Faster** – Litigation can take years to complete but ADR usually takes weeks or months.
- **Cheaper** – Parties can save on attorneys' fees and litigation costs.
- **More control and flexibility** – Parties choose the ADR process appropriate for their case.
- **Cooperative and less stressful** – In mediation, parties cooperate to find a mutually agreeable resolution.
- **Preserve Relationships** – A mediator can help you effectively communicate your interests and point of view to the other side. This is an important benefit when you want to preserve a relationship.

### What Is The Disadvantage Of Using ADR?

- **You may go to court anyway** – If you cannot resolve your dispute using ADR, you may still have to spend time and money resolving your lawsuit through the courts.

### What ADR Options Are Available?

- **Mediation** – A neutral person (mediator) helps the parties communicate, clarify facts, identify legal issues, explore settlement options, and agree on a solution that is acceptable to all sides.
  - **Court Mediation Program:** Mediators do not charge fees for the first two hours of mediation. If parties need more time, they must pay the mediator's regular fees.

Some mediators ask for a deposit before mediation starts which is subject to a refund for unused time.

- **Private Mediation:** This is mediation where the parties pay the mediator's regular fees and may choose a mediator outside the court's panel.
- **Arbitration** – A neutral person (arbitrator) hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial and the rules of evidence are often relaxed. Arbitration is effective when the parties want someone other than themselves to decide the outcome.
  - **Judicial Arbitration Program (non-binding):** The judge can refer a case or the parties can agree to use judicial arbitration. The parties select an arbitrator from a list provided by the court. If the parties cannot agree on an arbitrator, one will be assigned by the court. There is no fee for the arbitrator. The arbitrator must send the decision (award of the arbitrator) to the court. The parties have the right to reject the award and proceed to trial.
  - **Private Arbitration (binding and non-binding)** occurs when parties involved in a dispute either agree or are contractually obligated. This option takes place outside of the courts and is normally binding meaning the arbitrator's decision is final.

### **Mediation Service Programs In Alameda County**

Low cost mediation services are available through non-profit community organizations. Trained volunteer mediators provide these services. Contact the following organizations for more information:

#### **SEEDS Community Resolution Center**

2530 San Pablo Avenue, Suite A, Berkeley, CA 94702-1612

Telephone: (510) 548-2377 Website: [www.seedscrc.org](http://www.seedscrc.org)

Their mission is to provide mediation, facilitation, training and education programs in our diverse communities – Services that Encourage Effective Dialogue and Solution-making.

#### **Center for Community Dispute Settlement**

291 McLeod Street, Livermore, CA 94550

Telephone: (925) 373-1035 Website: [www.trivalleymediation.com](http://www.trivalleymediation.com)

CCDS provides services in the Tri-Valley area for all of Alameda County.

#### *For Victim/Offender Restorative Justice Services*

#### **Catholic Charities of the East Bay: Oakland**

433 Jefferson Street, Oakland, CA 94607

Telephone: (510) 768-3100 Website: [www.cceb.org](http://www.cceb.org)

Mediation sessions involve the youth, victim, and family members work toward a mutually agreeable restitution agreement.





(TYPE OR PRINT NAME)

(SIGNATURE OF ATTORNEY FOR PLAINTIFF)

**ALA ADR-001**

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER.:
--	---------------

Date:

_____	▶	_____
(TYPE OR PRINT NAME)		(SIGNATURE OF DEFENDANT)

Date:

_____	▶	_____
(TYPE OR PRINT NAME)		(SIGNATURE OF ATTORNEY FOR DEFENDANT)

# Exhibit B

Cheryl L. Schreck (SBN 130083)  
E-Mail: cschreck@fisherphillips.com  
FISHER & PHILLIPS LLP  
444 South Flower Street, Suite 1500  
Los Angeles, California 90071  
Telephone: (213) 330-4500  
Facsimile: (213) 330-4501

Attorneys for Defendant  
R&L CARRIERS SHARED SERVICES, L.L.C.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA - OAKLAND – ADMINISTRATION BUILDING  
COURTHOUSE

KEVIN FRY,

Plaintiff,

v.

R&L CARRIERS SHARED SERVICES,  
L.L.C., and DOES 1-50,  
Defendants.

CASE NO.: RG21114487  
*[Unlimited Jurisdiction]*

*Assigned for all purposes to the  
Honorable Patrick R. McKinney II, Dept. 15*

**DEFENDANT R&L CARRIERS SHARED  
SERVICES, L.L.C.'S ANSWER AND  
AFFIRMATIVE DEFENSES TO PLAINTIFF  
KEVIN FRY'S COMPLAINT**

Complaint Filed: September 29, 2021  
Trial Date: Not Yet Set

TO PLAINTIFF KEVIN FRY AND HIS ATTORNEYS OF RECORD:

Defendant, R&L CARRIERS SHARED SERVICES, L.L.C. ("Defendant") hereby  
answers Plaintiff KEVIN FRY's ("Plaintiff") complaint as follows:

**ANSWER**

Pursuant to California Code of Civil Procedure section 431.30, subdivision (d),  
Defendant generally denies each and every allegation and cause of action in Plaintiff's unverified  
complaint and denies that Defendant has sustained damages in the sum or sums alleged, or any  
other sum, or at all.

**FIRST AFFIRMATIVE DEFENSE**

1. The legal process served upon Defendant through its registered agent for service of process was legally insufficient in that Plaintiff failed to comply with the requirements of California Code of Civil Procedure §§ 415.20 and 416.10.

**SECOND AFFIRMATIVE DEFENSE**

2. Plaintiff's complaint, and each and every cause of action therein, is barred by the applicable statute of limitations, including, but not limited to, California Code of Civil Procedure § 335.1 and California Government Code §§ 12960 and 12965.

**THIRD AFFIRMATIVE DEFENSE**

3. Plaintiff's complaint, and each and every cause of action therein, is barred by the exclusive remedy provisions of the Workers' Compensation Act pursuant to California Labor Code section 3601, *et seq.*

**FOURTH AFFIRMATIVE DEFENSE**

4. If Plaintiff has received, or in the future receives, Workers' Compensation benefits by reason of the claimed injuries which give rise to this suit, any judgment rendered in favor of Plaintiff should be reduced by the amount of all Workers' Compensation benefits paid to or on behalf of Plaintiff.

**FIFTH AFFIRMATIVE DEFENSE**

5. Defendant is informed and believes, and based thereon alleges, that Plaintiff's claims are barred by Plaintiff's failure to exhaust administrative remedies.

**SIXTH AFFIRMATIVE DEFENSE**

6. There existed legitimate, non-discriminatory, and non-retaliatory reasons for the alleged acts of Defendant of which Plaintiff complains.

**SEVENTH AFFIRMATIVE DEFENSE**

7. Plaintiff failed to cooperate in the process of reasonable accommodation.

**EIGHTH AFFIRMATIVE DEFENSE**

8. Any recovery on Plaintiff's complaint, or any purported cause of action alleged therein, is barred in whole or in part by Plaintiff's failure to mitigate his damages.

**NINTH AFFIRMATIVE DEFENSE**

9. Defendant is informed and believes, and based thereon alleges, that any recovery on Plaintiff's complaint or any purported cause of action alleged against Defendant therein, is barred in whole or in part by the after acquired evidence doctrine.

**TENTH AFFIRMATIVE DEFENSE**

10. Plaintiff's claims are barred, in whole or in part, to the extent that any accommodation Plaintiff allegedly requested would have imposed an undue hardship on Defendant.

**RESERVATION OF RIGHT TO ASSERT ADDITIONAL AFFIRMATIVE DEFENSES**

Defendant presently has insufficient knowledge or information upon which to form a belief as to whether it may have additional, as yet unstated, affirmative defenses available. Accordingly, Defendant reserves the right to assert additional affirmative defenses in the event discovery indicates it would be appropriate.

**WHEREFORE**, this answering Defendant prays as follows:

1. That Plaintiff take nothing by his complaint for damages;
2. That Plaintiff's complaint herein be dismissed in its entirety with prejudice;
3. That Defendant recover its costs of suit herein, including its reasonable attorneys' fees; and
4. That the court award such other and further relief as it deems appropriate.

DATE: December 22, 2021

FISHER & PHILLIPS LLP

By:



Cheryl L. Schreck  
Attorneys for Defendant  
R&L CARRIERS SHARED SERVICES, L.L.C.

**PROOF OF SERVICE**  
**(CCP §§1013(a) and 2015.5)**

I, the undersigned, am at least 18 years old and not a party to this action. I am employed in the County of Los Angeles with the law offices of Fisher & Phillips LLP and its business address is 444 South Flower Street, Suite 1500, Los Angeles, California 90071.

On December 22, 2021, I served the following document(s) **DEFENDANT R&L CARRIERS SHARED SERVICES, L.L.C.'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF KEVIN FRY'S COMPLAINT** on the person(s) listed below by placing ☐ *the original* ☒ *a true copy* thereof enclosed in sealed envelope(s) addressed as follows:

Devin Coyle  
David Browne  
Stephanie Baker  
COYLE BROWNE LAW  
1999 Harrison Street, Suite 1800  
Oakland, CA 94612-4700

Attorneys for Plaintiff  
KEVIN FRY  
  
Tel: 510-584-9020  
Fax: 510-584-9039  
E-mail: devin@coylebrownelaw.com;  
david@coylebrownelaw.com;  
stephanie@coylebrownelaw.com

- ☒ **[by MAIL]** - I enclosed the document(s) in a sealed envelope or package addressed to the person(s) whose address(es) are listed above and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in Los Angeles California, in a sealed envelope with postage fully prepaid.
- ☐ **[by FAX]** - Based on an agreement of the parties to accept service by fax transmission, I faxed the document(s) to the person(s) at fax number(s) listed above from fax number (213) 330-4501. The fax reported no errors. A copy of the transmission report is attached.
- ☐ **[by OVERNIGHT DELIVERY]** - I enclosed the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the person(s) at the address(es) listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight carrier.
- ☐ **[by ELECTRONIC SERVICE]** - Based on a court order or an agreement of the parties to accept service by electronic transmission, I electronically served the document(s) to the person(s) at the electronic service address(es) listed above.
- ☐ **[by PERSONAL SERVICE]** - I delivered the document(s) to the person(s) at the address(es) listed above by (1) (a) personal delivery, or (b) by leaving the documents in an envelope/package with an individual in charge of the office, or (c) by leaving them in a conspicuous place in the office between the hours of 9:00 a.m. and 6:00 p.m., or (2) by messenger – a copy of the Messenger Declaration is attached.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed December 22, 2021, at Los Angeles, California.

Mayra Hernandez

Print Name

By:

*Mayra Hernandez*  
Signature

**PROOF OF SERVICE**  
(CCP §§1013(a) and 2015.5)

I, the undersigned, am at least 18 years old and not a party to this action. I am employed in the County of Los Angeles with the law offices of Fisher & Phillips LLP and its business address is 444 South Flower Street, Suite 1500, Los Angeles, California 90071.

On December 30, 2021, I served the following document(s) **DECLARATION OF CHERYL L. SCHRECK IN SUPPORT OF DEFENDANT R&L CARRIERS SHARED SERVICES, L.L.C.'S NOTICE OF REMOVAL OF CIVIL ACTION PURSUANT TO 28 U.S.C. §§ 1332 AND 1441** on the person(s) listed below by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelope(s) addressed as follows:

Devin Coyle  
David Browne  
Stephanie Baker  
COYLE BROWNE LAW  
1999 Harrison Street, Suite 1800  
Oakland, CA 94612-4700

Attorneys for Plaintiff  
KEVIN FRY

Tel: 510-584-9020  
Fax: 510-584-9039  
E-mail: devin@coylebrownelaw.com;  
david@coylebrownelaw.com;  
stephanie@coylebrownelaw.com

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Executed December 30, 2021, at Los Angeles, California.

Mayra Hernandez

Print Name

By:

*Mayra Hernandez*

Signature